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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

NO. 780

MARY CABALIK, Petitioner,

v.

JOHN C. BELL, JR., Successor to William D. Gordon, Secretary of Banking of the Commonwealth of Pennsylvania, Receiver of Pittsburgh-American Bank and Trust Company, Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA AND BRIEF IN SUPPORT THEREOF.

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INDEX.

	PAGE
Petition for Writ of Certiorari	1
I. Summary Statement of Matters Involved	1
II. Statement Disclosing Basis of Jurisdiction to Review	4
III. Questions Presented	4
IV. Reason Relied on for Allowance of Writ	5
Brief in Support of Petition for Certiorari	7
I. Opinions Below	7
II. Jurisdiction	7
III. Statement of the Case	8
IV. Argument	8
(a) Review of Pertinent Pennsylvania Law.	8
(b) Questions of Law	10
(1) When determining the constitutional validity of a stockholders' double liability assessment, classification of a bank and trust company incorporated under the Pennsylvania Act of 1876, P. L. 161, into a different category from a bank and trust company incorporated under the Pennsylvania Act of 1874, P. L. 73, is unreasonable, arbitrary, and of no effect because the basis supporting the classification has become irrelevant or artificial. The State Supreme Court of Pennsylvania erred in not so holding	10

PAGE

(2) An Act of Legislation, constitutional when passed, due to a series of subsequent events, can be rendered unconstitutional and unenforceable because of the provisions of Section 1 of the XIV Amendment. The State Supreme Court of Pennsylvania erred in not so holding 12

(3) The assessment made in accordance with Section 5 of the Pennsylvania Act of 1876, P. L. 161, as amended, against the shareholders of a bank and trust company incorporated under said Act of 1876, as amended, and acquiring trust powers by compliance with the Pennsylvania Act of 1919, P. L. 1032, is unenforceable because it conflicts with the first section of the XIV Amendment to the Constitution of the United States. The State Supreme Court of Pennsylvania erred in not so holding..... 12

V. Appendix 14

(a) Pennsylvania Act of 1919, P. L. 1032.... 14

(b) Pennsylvania Act of 1923, P. L. 173..... 18

Table of Cases.

PAGE

Abie State Bank v. Bryan, 282 U. S. 765; 75 L. Ed. 690 (1930) 6, 12

Atchison, Topeka R. Co. v. Matthews, 174 U. S. 96 (1898) 11, 14

Bayside Fish Flour Co. v. Gentry, 297 U. S. 421; 80 L. Ed. 772 (1935) 11, 14

Gordon, Secretary of Banking, v. Winneberger, 16 D. & C. 505 9

Gordon, Secretary of Banking, v. Winneberger, 310 Pa. 362; 165 A. 408 ..... 9, 10

Harr, Secretary of Banking, v. Boucher et al., 142 Pa. Superior Court, 114; 15 A. 2nd, 699 (1940) .5, 10

New York Rapid Transit Corporation v. City of New York, 303 U. S. 571; 82 L. Ed. 1024 (1937) 11

Statutes Cited.

PENNSYLVANIA STATUTES:

1874, Act of 1874, P. L. 73 (Corporation Act of 1874) 2, 5, 8, 10, 11, 12

1876, Act of 1876, P. L. 161 (Bank Incorporation Act) 1, 2, 3, 4, 5, 8, 9, 10, 11, 12

1881, Act of May 24, 1881, P. L. 22 8

1889, Act of May 9, 1889, P. L. 159 8

1895, Act of May 29, 1895, P. L. 127 8

1907, Act of June 1, 1907. P. L. 382 8

1909, Act of 1909, P. L. 412 ..... 1, 4, 9

1919, Act of 1919, P. L. 1032 ..... 2, 3, 4, 9, 11, 12, 14

1923, Act of 1923, P. L. 173 ..... 2, 9, 13, 18

FEDERAL STATUTE: PAGE

Judicial Code, Section 237 (b), as amended by the Act of Congress of February 13, 1925; 28 U. S. C. A., Section 344 ..... 4, 7

Constitutions Cited.

Constitution of the United States, Section 1 of XIV Amendment; U. S. C. A. Constitution Part 3; Purdon—Constitution, page 45.....2, 4, 5, 6, 12, 13

Constitution of the State of Pennsylvania, Article III, Section 7..... 12

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

May it please the Court:

The petition of Mary Cabalik respectfully prays that a writ of certiorari be issued to the Supreme Court of Pennsylvania and shows to this Honorable Court:

I.

Summary Statement of Matters Involved.

The Pittsburgh-American Bank and Trust Company was the result of a merger of two corporations, both of which were incorporated prior to 1923 as "banks" under the Pennsylvania Act of 1876, P. L. 161, as amended by the Act of 1909, P. L. 412, (R., p. 4 a, 5 a). The resultant corporation, having complied with the

Pennsylvania Act of 1919, P. L. 1032, became a "bank and trust company" (R., p. 4 a).

The Secretary of Banking of the Commonwealth of Pennsylvania, as Receiver, took possession of the Pittsburgh-American Bank and Trust Company and levied a double liability assessment against the stockholders thereof, of which your Petitioner is one, in pursuance of a provision of Section 5 of the Act of 1876, *supra.*

The Secretary of Banking of the Commonwealth of Pennsylvania, as Receiver of the Pittsburgh-American Bank and Trust Company, instituted suit in assumpsit in the Court of Common Pleas of Allegheny County, Pennsylvania, against your Petitioner, as a stockholder, to enforce the double liability assessment. A Statutory Demurrer urging the equal protection clause of Section 1 of the XIV Amendment was filed (R., p. 20 a, 21 a) and subsequently overruled (R., p. 41 a). The position is that although the stockholders' double assessment provision of the 5th Section of the Banking Act of 1876 was constitutional when passed, a series of subsequent events has rendered an assessment unenforceable because it would now conflict with the equal protection clause of the XIV Amendment to the Federal Constitution.

A "bank", incorporated under the Banking Act of 1876, Section 5 of which provided for stockholders' double liability, by complying with the Act of 1919, P. L. 1032, became a "bank and trust company". A title insurance company was incorporated under the Corporation Act of 1874, P. L. 73, but without liability to its stockholders for a double assessment. Subsequent enabling legislation in Pennsylvania and particularly the Act of 1923, P. L. 173, has granted to a title insurance company, incorporated under the Corporation Act of 1874, all the powers possessed by a "bank and trust

company" incorporated under the Banking Act of 1876. Consequently, after 1923 the Pennsylvania Legislature permitted corporations incorporated under either act to operate as a "bank and trust company". The minimum capital structures by statute were identical,—Act of 1919, P. L. 1032. Separate classification, therefore, would rest upon no sound basis and be ineffective. To enforce a double liability assessment against the stockholders of the one when the stockholders of the other are immune from assessment would offend the equal protection clause aforementioned.

The Statutory Demurrer having been overruled, an Affidavit of Defense was then filed, again urging the Federal question (R., p. 45 a) and, upon motion, judgment was entered against your petitioner for want of a sufficient affidavit of defense by a Court *en Banc* on June 24, 1942 in the sum of $6348.50 (R., p. 50 a).

At the time of the bringing of this suit there were also filed suits against many other stockholders. In view of the number of suits, as well as for the purpose of expediting litigation, the Court *en Banc* considered only this particular action and continued the others (R., p. 25 a).

Your Petitioner appealed from the Final Order of the Court of Common Pleas of Allegheny County, Pennsylvania, to the Supreme Court of Pennsylvania, which affirmed the Lower Court and rendered a *Per Curiam* Opinion. The Federal question was decided against the Petitioner in the Opinion of the State Supreme Court (R., p. 54).

II.

Statement Disclosing Basis of Jurisdiction to Review.

The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U.S.C.A. Section 344).

The enforcement of the assessment provision of the following Pennsylvania Statute is involved: Section 5 of the Act of May 13, 1876, P. L. 161, as amended by the Act of 1909, P. L. 412. The relevant portion of Section 5 provides:

> "The shareholders of any corporation formed under this act, shall be individually responsible, equally and ratably, but not one for the other, for all contracts, debts and engagements of such corporation to the amount of their stock therein at the par value thereof in addition to the par value of such shares."

The judgment sought to be reviewed was rendered on January 5, 1943 by the Supreme Court of Pennsylvania, 346 Pa. 115; 29 A. 2nd, 678.

III.

Questions Presented.

1. Is the assessment made in accordance with Section 5 of the Pennsylvania Act of 1876, P. L. 161, as amended, against the shareholders of a bank and trust company incorporated under said Act of 1876, as amended, and acquiring trust powers by compliance with the Pennsylvania Act of 1919, P. L. 1032 unenforceable because it conflicts with the First Section of the XIV Amendment to the Constitution of the United States?

2. Cannot an Act of Legislature, constitutional when passed, due to a series of subsequent events be rendered unconstitutional and unenforceable because of the provisions of Section 1 of the XIV Amendment?

3. When determining the constitutional validity of a stockholder's double liability assessment, is not classification of a bank and trust company incorporated under the Pennsylvania Act of 1876, P. L. 161, into a different category from a bank and trust company incorporated under the Pennsylvania Act of 1874, P. L. 73, unreasonable, arbitrary, and of no effect because the basis supporting the classification has become irrelevant or artificial?

IV.

Reason Relied on for Allowance of Writ.

Both the Supreme Court of Pennsylvania and the Superior Court of Pennsylvania have decided and applied a Federal question of substance in a way not in accord with an applicable decision of your Honorable Court. In deciding the Federal question raised in this case, the Supreme Court of Pennsylvania adopted the decision of the Superior Court of Pennsylvania in *Harr, Secretary of Banking, Appellant, v. Boucher et al.*, 142 Pa. Superior Court 114; 15 A. 2nd, 699 (1940), (R., p. 55). The Superior Court decided on page 132 of 142 Pa. Superior Court in reference to both State and Federal Constitutions that "if an act was constitutional when passed, no passage of time, no series of events could render it an unconstitutional enactment at a later date." Consequently, decisions of both Appellate Courts in Pennsylvania have nullified in that State in a substantial degree the words "enforce" and "nor deny" in the First Section of the XIV Amendment and are in direct conflict with the decision of your Honorable Court in

Abie State Bank v. Bryan (1930), 282 U. S. 765, at 771; 75 L. Ed. 690, at 701, opinion by Chief Justice Hughes, which decided that an act providing for assessments against State Banks, litigated and declared constitutional under the terms of Section 1 of the XIV Amendment to the Federal Constitution at the time of passage of such act, could become unconstitutional under Section 1 of the XIV Amendment because of subsequent events, and was so declared.

Wherefore, your Petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of Pennsylvania, commanding that Court to certify and to send to this Court, for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in this case, numbered and entitled on its docket No. 156 March Term, 1942, John C. Bell, Jr., Successor to William D. Gordon, Secretary of Banking of the Commonwealth of Pennsylvania, Receiver of Pittsburgh-American Bank and Trust Company, v. Mary Cabalik, Appellant, and that said judgment of the Supreme Court of Pennsylvania may be reversed, and that your Petitioner may have such other and further relief in the premises as to your Honorable Court may seem meet and just.

And your Petitioner will ever pray.

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GEORGE F. TAYLOR,
Counsel for Petitioner.